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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-753.

AMERICAN EXPORT ISBRANDTSEN LINES, INC.,
Petitioner,

v.

SUN SHIPBUILDING AND DRY DOCK COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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January 10, 1972.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

INTRODUCTORY STATEMENT.

The respondent Sun Shipbuilding & Dry Dock Company ("Sun") respectfully requests that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit filed by American Export Isbrandtsen Lines, Inc. ("Export") be denied.

Sun feels that there is no substance to Export's contentions, the reiteration of which has delayed any progress on the merits of the matter for over two and one-half years. The Court below, as indicated by its *per curiam* opinion, is in agreement with this view. Accordingly, Sun will not rebut in detail the many legal and factual assertions made by Export but will briefly attempt to put this case in proper perspective.[1]

1. As to the facts, in spite of Sun's constant correction, Export has stated at every level, including its Petition to this Court certain of its controverted allegations as settled facts.

BRIEF SUMMARY OF RELEVANT FACTS.

The contract in question provided for the reconstruction of two ore-carrying vessels. In its haste to put into operation ships capable of transporting containerized cargo, Export opted for converting the two existing vessels to this specialized use rather than having completely new ships fabricated. Assumedly because of its like interest in promoting container traffic, the Maritime Administration ("MarAd"), an agency within the Department of Commerce, atypically agreed to participate in the cost of the conversion work even though it was not new construction. This was the first such subsidized conversion, and the MarAd standard form of construction differential subsidy contract had to be adapted accordingly. The most significant addition was a clause in the Specifications, quoted by Export at pp. 4-5 of its Petition, which stated explicitly that only the conversion work as described in the Plans and Specifications was covered by the contract; any general repair work which the Owner desired to be performed to the existing hull was to be contracted for separately without MarAd involvement. Thus, MarAd maintained its historical practice of non-participation in mere repair work.[2]

In due course Sun and Export contracted for and Sun performed voluminous repairs in the manner that is normal for such work—through oral directives and written work orders signed by a representative of the Owner. This procedure was, of course, in sharp contrast to that strictly provided for changes to the Plans and Specifications of

2. This important point completely distinguishes the many government contract cases relied upon by Export. Under the allegations of Sun's Complaint and supporting Affidavits, which must be accepted as true at this point, this is not a dispute between the United States and its Contractor. On the contrary, it is a conflict solely between two private parties.

the subsidy contract which required that prior approval be granted by MarAd. However, Sun and Export have been unable to agree on a price for the repair work performed, and therefore Sun filed suit for the amount it considered reasonable. In answer to Export's protestations that only the Maritime Administration had jurisdiction to adjudicate this question of price, the District Court below refused to dismiss or stay the action but ordered that an initial limited trial be held solely on the issue of whether a private repair contract was indeed entered into by Sun and Export separate and apart from the construction differential subsidy conversion contract.

REASONS FOR OPPOSITION TO THE PETITION.

Aside from the correctness of the District Court's denial of Export's Motion to Dismiss or Stay and the Court of Appeals' subsequent affirmance, there are two factors which bear on consideration of Export's Petition For a Writ of Certiorari. First, the District Court's ordering of a limited trial was eminently reasonable. That procedure also appears to have found favor with the Court of Appeals. In the unlikely event that Sun is unable to establish a basis for court jurisdiction, as it has alleged in its Complaint and Affidavits, a minimum of time will have been lost.

Second, contrary to the preposterous statements in Export's Petition, the resolution of this case will have no impact beyond the purely monetary interests of Sun and Export. A court decision will certainly not undermine MarAd procedures and will not have a detrimental impact on the whole field of government contracts. This case is a sport: it involves a unique situation arising out of the first subsidized ship conversion. In subsequent instances when it chose to subsidize conversions MarAd included in the contract's Special Provisions a clause which, if it is possible, indicated even more clearly than its predecessor clause in the Export Specifications that MarAd rejected any involvement whatsoever in repair work that the Owner might wish accomplished simultaneously with the conversion. Furthermore, there is presently under consideration the adoption of a totally new standard MarAd construction contract which withdraws MarAd from the disputes arena as much as possible. The instant controversy could only arise where there is a three-party government contract (to the best of Sun's knowledge, confined to the subsidized shipbuilding area) and where government contract work as well as private work is being performed on the

same subject matter by and for the same parties. Obviously government contractors would not sue in court alleging the existence of a private contract, and "bypassing" their administrative remedies, unless such an allegation could be supported, in which case judicial jurisdiction would be entirely appropriate.[3]

The Courts below have handled the matter properly and in a manner designed to expedite the resolution of this conflict. Sun's case has now been pending for more than two and one-half years, and the time for legal skirmishing is through. The matter should be remanded to the District Court for a trial on the merits.

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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3. Here there is no standard contract, which requires interpretation, no agency whose regulatory program will be affected in the least. Indeed, although aware of this action, MarAd has not seen fit to intervene or participate in any way.